

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LANCE McDERMOTT,)	No. C05-0860L
)	
Plaintiff,)	
)	
v.)	
)	ORDER DENYING PLAINTIFF'S
UNITED STATES POSTAL SERVICE,)	MOTION FOR PROTECTIVE ORDER
)	
Defendants.)	

This matter comes before the Court on the plaintiff's "Motion for Protective Order." Dkt. # 17. In the operative pleading, plaintiff alleges that the United States Postal Service has violated governing statutes, rules, regulations, manuals, and policies and apparently seeks a declaration to that effect. Pleading Title: 890 -- Other Statutory Actions (Dkt. # 5). In this motion, plaintiff seeks an order directing the defendant to "rehire the Postal Police to meet the statutory [sic] requirement and needed security, safety and protective measures for all employees and facilities." Motion at 1.

Plaintiff's complaint sets forth a series of questions, such as "Has Harold Matz violated the security rules by issuing local security rules (policy) when only given implementation authority?" and asks the Court to decide the issues presented. Pleading Title: 890 -- Other Statutory Actions at 20 and 75 (Dkt. # 5). At no point does plaintiff request an order compelling defendant to take action or otherwise request a writ of mandamus to compel

1 defendant to take action.¹ He is, therefore, not entitled to such relief.

2 Even if the Court considers plaintiff's request for an order directing defendant to
3 rehire the Postal Police on its merits, plaintiff has not satisfied the heavy burden of showing that
4 the extraordinary remedy of mandamus is appropriate. Mandamus is available only when
5 "(1) the plaintiff's claim is clear and certain; (2) the defendant official's duty to act is
6 ministerial, and so plainly prescribed as to be free from doubt; and (3) no other adequate remedy
7 is available." Barron v. Reich, 13 F.3d 1370, 1374 (9th Cir. 1994) (internal quotation marks
8 omitted). Plaintiff has not identified any statutory dictate or other authority imposing a duty on
9 defendant to rehire the Postal Police. The handbooks, regulations, and documents cited show
10 only that funds derived from recycling programs may be used to hire guards, that the Postal
11 Inspection Service is responsible for the protection of personnel and may authorize a security
12 force at selected facilities, that in 2000 there was a review of the security requirements for the
13 Postal Service, and that there are regulations and policies related to parking/shipping facilities
14 and security/safety measures which plaintiff believes have been violated. Very few of these
15 provisions describe ministerial tasks and none of them establishes plaintiff's clear and certain
16 right to the reinstatement of the Postal Police. Assuming for purposes of this motion that
17 plaintiff could satisfy the first two prongs of the mandamus analysis, there is no showing of the
18 lack of other adequate remedy.

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21 ¹ Although plaintiff has filed additional documents seeking orders directing the Postal Service to
22 take action (see Dkt. # 12 and 31), to the extent plaintiff intended to amend or supplement his complaint
23 through these documents, they are ineffective. Pursuant to Fed. R. Civ. P. 15(a), plaintiff was entitled to
24 amend his complaint once as a matter of course prior to the time defendant filed its first motion to
25 dismiss. This he did by submitting the "Pleading Title: 890 -- Other Statutory Actions" on August 15,
26 2005. This version of the complaint became the operative pleading in this matter, superseding the
original complaint and exhibits filed on May 9, 2005. Plaintiff's subsequent filings (see Dkt. # 12, 13, and
31) do not become part of his complaint or otherwise amend the allegations and claims for relief stated in
Dkt. # 5 because plaintiff did not obtain leave of Court or the written consent of defendant as required by
Rule 15(a).

1 For all of the foregoing reasons, plaintiff's motion for protective order is DENIED.
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3 DATED this 15th day of June, 2006.
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7 Robert S. Lasnik
8 United States District Judge
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